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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/568,138 | 02/08/2006 | Dusan Kocis | 207457 | 7743 |
| 38137 7590 12/31/2009 ABELMAN, FRAYNE & SCHWAB 666 THIRD AVENUE, 10TH FLOOR NEW YORK, NY 10017 | | | | |
| EXAMINER | | | | |
| TRAIL, ALLYSON NIEL | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2876 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,138

Applicant(s)

KOCIS ET AL.

Examiner

ALLYSON N. TRAIL

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 10, and 15 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 8, 9 and 11-14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-06)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date 4/06

DETAILED ACTION

Continuation Data

1. This application is a national stage entry of PCT/SK04/00009 filed August 6, 2004.

Information Disclosure Statement

2. The Information Disclosure Statement filed on April 7, 2006 has been considered. An initialed copy of the Form 1449 is enclosed herewith.

Specification

3. The Specification is objected to because of the following informalities:
Re page 1, line 1: replace, "sytem" with --system--.
Appropriate correction is required.

Claim Objections

4. Claim 1-15 are objected to because of the following informalities:
The pending claims recite many limitations (i.e., "the background", the whole record", "the language", "the location", "the axes", "the aggregate", "the maximal", "the absolute", etc.) which lack antecedent basis. Please correct any antecedent basis issue in claim 3 and all other recited claims.

Please replace each, "them", "it", or "its" with the limitation in which "them", "it" and "its" refer to.

Re claim 1, line 4: replace, "record medium" with --recording medium--.

Claims 12-15 are objected to under 37 CFR 1.75(c) as being in improper depending claims. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

It is believed that claim 8 should depend on claim 7 as opposed to claim 5, since claim 7 recites a method of recording symbolic data marks and claim 5 refers to a method of recording.

Claim 12, line 2: replace, "it" with the term "it" refers to, i.e., --the background--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claims 1 and 15, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

Regarding claims 3, 6, 10, and 15, the phrase "i.e. the number of dark elements..." renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite in that it fails to point out what is included or excluded by the claim language. The limitations, ""with equal or different relative distance in horizontal and vertical directions" and "elements placed on one half of the mentioned connecting line or close to it" are examples of this. This claim is an omnibus type claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Lubow (7,322,514).

With respect to claims 1 and 2, Lubow discloses in column 10, line 51 – column 11, line 5, as well as figure 10A, a background containing symbolic data marks, which include aggregate, constant number of dark elements in the whole record, which is characterized by a recording medium, wherein the data symbolic marks printed on recording medium are arranged into a grid on positions with periodically repeating properties in both horizontal and vertical directions, textual or graphical print printed in overlay with data symbolic marks, elements of modulation of the record by graphic pattern. Also see the abstract, which discusses the pattern being read by a scanner to obtain a code directly.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Allyson N. Trail* whose telephone number is (571) 272-

2406. The examiner can normally be reached between the hours of 7:30AM to 4:00PM Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (571) 272-2398. The fax phone number for this Group is (571) 273-8300.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [allyson.trail@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

/Allyson N. Trail/

Allyson N. Trail
Primary Examiner
Art Unit 2876

December 28, 2009